

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 00-0325 AGI
ADJUSTED GROSS INCOME TAX
FOR TAX PERIODS: 1998

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Issues

Adjusted Gross Income Tax: Imposition

Authority: United States Constitution, Amendment XIV, IC 6-3-2-1, IC 6-3-1-3.5, 26 U.S.C.A. Sec. 61 (a), 26 U.S.C.A. Sec. 63, IC 6-3-1-3.5 (b), U.C.C. Sec. 1-207, 8 U.S.C.A. Sec. 481, Cooper Industries, Inc., Cooper CPS Corporation, Cooper Poweer Systems, Inc., McGraw Edison Company, and Cooper Turbocompressor, Inc. v. Indiana Department of Revenue, 673 N.E. 2d 1209.

Taxpayer protests the imposition of the adjusted gross income tax.

Statement of Facts

Taxpayer protested an assessment of adjusted gross income tax for the year 1998. A hearing was held by telephone with his representative. More facts will be provided as necessary.

Adjusted Gross Income Tax: Imposition

Discussion

For the year 1998, Taxpayer filed a federal 1040NR-EZ, "U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents." Taxpayer indicated on that return that he had no reportable federal adjusted gross income. Since Taxpayer reported no federal adjusted gross income on his federal tax return, he reported no federal adjusted

gross income on his state return. Pursuant to Taxpayer's computation of her tax, Taxpayer had no tax liability and was owed a refund of monies withheld by her employer and remitted to the Indiana Department of Revenue. Taxpayer did include with his federal return a "Statement of Foreign Earned Income" on which he stated that he earned \$103,693.19 as disability income. The Indiana Department of Revenue computed his Indiana tax based upon that income and sent him a proposed assessment for additional tax, interest and penalty. Taxpayer protested the assessment.

An income tax is imposed upon the adjusted gross income of all Indiana residents. IC 6-3-2-1. Indiana adjusted gross income is defined at IC 6-3-1-3.5 as federal adjusted gross income as defined in Section 62 of the Internal Revenue Code with certain modifications. The computation of federal adjusted gross income begins with the determination of a taxpayer's gross income, which is defined by section 61(a) of the Internal Revenue Code as follows:

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

- (1) Compensation for services, including fees, commissions, fringe benefits, and similar items. . .

The issue to be determined is whether a taxpayer uses its actual federal adjusted gross income or the figure reported on the federal income tax return to determine the Indiana adjusted gross income. The Indiana Tax Court dealt with this issue in Cooper Industries, Inc., Cooper CPS Corporation, Cooper Power Systems, Inc., McGraw Edison Company, and Cooper Turbocompressor, Inc., v. Indiana Department of Revenue, 673 N.E.2d 1209. In that case, the Indiana Department of Revenue asserted that petitioner needed to use the number reported on the federal tax return rather than the actual federal adjusted gross income in computing its Indiana tax liability. The taxpayer in that case was a corporation rather than an individual as in the protest hearing. That is not, however, a significant difference since the provisions concerning the determination of the Indiana adjusted gross income are identical. The Court found that taxpayers are to use their actual federal adjusted gross income in the computation of state tax liabilities rather than the numbers reported on their federal tax returns. The Court stated this succinctly at page 1211 as follows:

The Department's argument that the taxpayer must begin calculating its Indiana adjusted gross income with the precise amount the taxpayer reported as taxable income on its federal return misses the mark. The Indiana Code provides that 'the term 'adjusted gross income' shall mean. . . in the case of corporations, the same as 'taxable income' as defined in Section 63 of the Internal Revenue Code,' subject to four adjustments that are not applicable here. Ind. Code Ann. Sec. 6-3-1-3.5 (b). This definition is plain and unambiguous. Indiana adjusted gross income begins with federal taxable income as defined by I.R.C. Sec. 63, not as reported by the taxpayer.

Taxpayer admits that he is a citizen of Indiana. He contends, however, that he is a nonresident alien for federal purposes and entitled to utilize the nonresident alien federal

return to report his income for federal tax purposes. Pursuant to Webster's II New Riverside University Dictionary (1988), p. 92, an "alien" is a person "owing allegiance to another country or government" ...or an unnaturalized foreign resident of a country." Taxpayer admits that she was born in the United States of America. The United States Constitution, Amendment XIV, Section 1 provides for United States Citizenship as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

Since Taxpayer was born in the United States of America, he is a United States citizen unless he revokes his citizenship. Taxpayer contends that he revoked his citizenship pursuant to the U.C.C Sec. 1-207. The Uniform Commercial Code is a model code concerning the regulation of commercial transactions. Provisions of the Uniform Commercial Code have no bearing on the national status of American citizens. Therefore Taxpayer could not revoke his American citizenship by invoking provisions of the Uniform Commercial Code.

The means by which United States citizens can revoke their citizenship are listed at 8 U.S.C.A. Sec. 1481. Those methods include such actions as accepting employment by the government of another nation, conviction of treason, signing a statement of revocation on the forms provided by the U. S. Department of State and filing such revocation at an American Embassy, American Consulate or the U.S. Department of State or enrolling in a foreign military force and fighting against the United States. There was no evidence that Taxpayer used any of these means to revoke his United States Citizenship. Since Taxpayer never effectively revoked his citizenship, he is a United States Citizen and is ineligible to determine his federal tax liability according to the rules for nonresident aliens.

Taxpayer admits in his documentation that he is an Indiana resident and received disability income from his Indiana employer. Disability income paid pursuant to premiums provided by an employer are compensation for services rendered. As such, Taxpayer's disability income is includable in Taxpayer's gross income pursuant to Section 61 (a) of the Internal Revenue Code. The Indiana Department of Revenue properly used this figure in computing Taxpayer's Indiana tax liability.

Finding

Taxpayer's protest is denied.